

Giving Meaning to Code Enforcement: *a comparative approach*

Florida Association of County Attorneys, June 27, 2018

Bob Shillinger, Monroe County Attorney

Steve Williams, Assistant County Attorney

Enforcement Options

- Administrative – Chapter 162, Part I
- Civil Citation – Chapter 162, Part II
- Civil Actions –
 - Injunctive Relief
 - Enforcement Actions
 - Collections
- Quasi-Criminal – F.S. 125.69

Enforcement Options

Code Enforcement Comparison Chart

Forum Choice	Administrative Chapter 162, Part I	Civil Citation Chapter 162, Part II	Civil Enforcement Action Injunctive Relief	Quasi Criminal F.S. 125.69(1)
Forum	Self-designed process	County Court	Circuit Court	County Court
Finder of Fact/Presider	Board or Hearing Officer	County Court Judge	Circuit Judge	Jury & County Judge
Initiating party	Code Enforcement Officer	Code Enforcement Officer	County Attorney & witnesses	Code inspector, LEO, SAO, City Attorney, but not County Attorney
Defendant/Respondent	Property owner and/or violator	Violator	Property owner and/or violator	Violator
Indigent counsel	No	No	No	Yes
Mandatory cure opportunity	Yes unless repeat, serious threat to health, safety, welfare, or irreparable	Yes unless repeat, serious threat to health, safety, welfare, or irreparable	No	No for LEO's Yes for code inspectors, unless repeat, serious threat to health, safety, welfare, or irreparable
Maximum penalty	\$250/\$1k per day - fine \$500/\$5k per day - repeat \$5k/\$15k - Irreversible	\$500 – fine	Equitable relief & contempt	60 days jail, \$500 fine (\$2000 to enforce federal mandated program)
Standard of Proof	Preponderance	Preponderance	Preponderance	Beyond Reasonable Doubt
Discovery	Only if your rules permit	No discovery	Full discovery	Limited discovery
Rules of Evidence	No, but follow due process	Yes	Yes	Yes
Statute of Limitations	None	4 years	4 years	1 year
Enforcement mechanism	Lien foreclosure if eligible Money Judgment for fines	Contempt for non-payment	Contempt – 6 months in jail w/o jury; compliance	Jail
Appellate Forum	Circuit Court App. Div.	Circuit Court App. Div.	District Court of Appeal	Circuit Court App. Div.
Pros	Efficient, expeditious, dictate process	Simplest process Existing process	Presumptions favor govt. Greatest potential penalty	Severe sanction Works for “assetless”
Cons	Limited enforcement vs. homesteaded owners and non-property owners	Limited fines, limited teeth	Full scale civil litigation	7 citizens miss work Don't control process highest burden of proof Pay SAO & PD costs Pay incarceration costs

Venue Shopping

- Administrative – your own process
 - Code Enforcement Board
 - Special Magistrate
- Civil Citation – County Court
- Civil Actions – Circuit Court
- Quasi-Criminal – County Court

Code Enforcement Board

- 7 Volunteer residents of jurisdiction
 - 5 or 7 for jurisdictions of 5,000 or less
- Architect, Business, Engineer, General Contractor, Subcontractor, and Realtor (whenever possible)
- Office for Dual Office Holder purposes
- Financial Disclosure Form 1 filers
- Quorum
- Majority vote
- Separate legal adviser and prosecutor

Code Enforcement Special Magistrate

- Same Powers as Board
- Usually lawyer but not required
- Can be paid
- Need not be a resident of the jurisdiction
- Financial Disclosure Filer ???
- Office Holder for Dual Office purposes

Hybrid – Board & Special Magistrate

- Assign cases based upon type or severity of violation
- Violator chooses between Board or Special Magistrate
- Board refers certain cases to Special Magistrate
 - Adopt rules clearly setting forth procedures

Consalo, Karen Z., Decision by Judge or Jury Alternatives to Traditional Code Enforcement Boards, 89-NOV Fla. B.J. 64 (November 2015). (In materials)

Administrative: Pros

- Chapter 162 & Due Process provides a framework
- Local government gets to fill in the gaps:
 - Customize its own system
 - Determine how much in staff resources to invest
 - Decide between Board, Special Magistrate, or hybrid
 - Write your own procedural rules (sample in materials)
 - Schedule your own hearings: when, where, how often

Administrative: Pros

- Cost efficient
- Fines escalate
 - Repeat offenders
 - Irreparable or Irreversible
 - Super Fines
- Flexible pleading**
- Formal rule of evidence not required
- Statute of Limitations – none unless jurisdiction adopts one
- Property owner & non-owner violator can be cited

Limits of Enforcement through Administrative Process

- No contempt power to enforce orders or compel attendance
- Can't foreclose liens against homesteaded property
- “Asset-less” have no incentive to comply
- Tenant violators can be a complication
- Bankruptcy can wipe out fines

More Limits of Administrative Option

- Cost & effort to establish system & staff
- Trouble finding Board members
- Cost of Special Magistrate(s) & possible conflicts
- Lack of respect from Article V Appellate Judges
 - Single judge appellate panel in smaller circuits
 - Attempts to re-weigh evidence

Civil Citation Process

Pros

- Courts Established
- Least Expensive
- Power of Contempt
- Limited if any discovery

Cons

- More precise pleading
- Fines capped at \$500
- No enhanced penalties for repeat, irreparable, or irreversible violations
- Loss of control over docket and schedule

Civil Litigation

Enforcement

- Injunctive Relief
 - Clear Legal Right
 - Inadequate remedy at law (presumed)
 - Irreparable Injury (presumed)
- Monetary fines

Collections

- Liens foreclosure
- Action for money judgment on code fines

Civil Litigation

Pros

- System Established
- Strong presumptions
- Subpoena Powers
- Attorney's Fees (for collections)
- Contempt Power
- Discovery opportunities

Cons

- Expensive
- Time Consuming
- Discovery costs
- Attorney resources
- Limits on Foreclosures

Candidates for Civil Injunction

- Homesteaded properties with serious threat to health, safety & welfare of community
- Repeat violators to whom enhanced fines are simply the cost of doing business (e.g. vacation rentals)
- Cases too complex to prosecute through other means
- Cases which will be greatly improved via discovery
- Properties that are part of a bankruptcy estate

Quasi-Criminal Prosecution under F.S. 125.69(1)

Violations of county ordinances shall be prosecuted in the same manner as misdemeanors are prosecuted.

Such violations shall be prosecuted in the name of the state in a court having jurisdiction of misdemeanors by the prosecuting attorney thereof and upon conviction shall be punished by a fine not to exceed \$500 or by imprisonment in the county jail not to exceed 60 days or by both such fine and imprisonment.

Why Quasi-Criminal Ordinance Violation?

F.S. 775.08 (4) “The term ‘crime’ shall mean a felony or misdemeanor.”

F.S. 775.08(2) . . . “The term ‘misdemeanor’ shall not mean a conviction for . . . any municipal or county ordinance.”

F.S. 775.08(3) . . . “The term ‘noncriminal violation’ shall not mean any conviction for any violation of any municipal or county ordinance.”

So what term describes an ordinance violation with an incarcerative penalty????

Quasi-Criminal

Pros

- SAO prosecutes**
- System established
- Jail time
- Limited discovery
- Attention getter for “asset-less” & “asset-rich”

Cons

- SAO prosecutes**
- Jury (7 citizens miss work)
- Reasonable doubt
- SAO & PD costs
- Incarceration costs
- No control
- Low priority

SAO Prosecutes**

- Counties lack authority to prosecute under F.S. 125.69
- The County Prosecutor we never knew
 - § 80, ch. 2003-402 amended F.S. 125.69 to create
 - § 52, ch. 2004-265 struck language prior to 7/1/04
- For SAO to prosecute, must either have
 - a state charge with local ordinance violation
 - a contract between SAO & County to cover costs

Municipal Prosecutor

Art. V, Section 17

Article V, Section 20(c)(12)

F.S. 34.13(5)

Fla. R.Jud. Admin 2.265

Alternative Method - Public Shaming

ntary
2A

rate
ark

rate
teen
gan
e
ago.
Scott
day
of

percent

RLD

ated Press

port
talks

tras-
(
White
d that
e
als
et with
lers
ly clas-
een
ndling
GA.

DIO

41
P.M.

n
day's
ting of
Jon.

v:
test High

this month as a pilot program at Sugarloaf School will be launched in all Monroe County schools this fall, school district officials announced on Tuesday. A news conference to detail the implementation of School Text Tips at all schools will take place 10 a.m. Wednesday in the board room of the school

The news conference will be broadcast online on Channel 78 and via the Monroe County School District's Facebook page. Press participants, parents, students and other stakeholders will be able to submit questions about the program through the district's Facebook Live page to receive responses in real

time, whose sons attend Sugarloaf School and Key West High School, started developing School Text Tips six years ago, following the shooting at Sandy Hook Elementary School. The program was ready to launch just before the Valentine's Day shooting in Parkland, Florida.

Verne wanted students to

school officials when they saw or heard students discussing things like suicide, drugs, weapons, bullying or other concerning behaviors.

"The students are our eyes and ears on the ground," Verne said. "They're the ones who know what's happening, and they're the ones we need to be hearing things from."

ect to
er to ex
through
trict next

"This
Sugarloa
to deter
manpow
not nee
system,"

A RAPID RESPONSE



The Rip-Off Rapid Response Team pickets Oro Gold Cosmetics to get a full refund for a man who was charged nearly \$10,000 for products from the store, located at 518 Duval St.

Rip-Off team helps man get \$10K refund

BY SCOTT UNGER
Key West Citizen

A local consumer advocacy group picketing in front of a Duval Street cosmetic store Monday led to the establishment refunding nearly \$10,000 to a Vermont man.

Members of the Rip-Off Rapid Response Team

stood in the pouring rain in front of Oro Gold at 518 Duval St. for an hour and a half Monday before negotiating a refund with store owners, according to Rip-Off team member Bruce Mitchell.

A 54-year-old Vermont man diagnosed with bipolar disorder and delusions was sold two packages of

cosmetics from the store over a half-hour period totaling \$9,752, even though he doesn't use cosmetics, according to friend Jen Bashore.

Although the stores are required to have a 30-day refund policy, the man's receipt stated there were no refunds, only exchanges, within 30 days.

The victim is a frequent visitor to Key West but displayed troubling signs this trip, according to Bashore. "He was totally taken advantage of."

The Rip Off team has been battling the cosmetic stores for several years, working to obtain refunds

2 fo
2 re
in b
inci

BY ALEX V
Key West C

The Co
Monroe
Office fo
who we
early Tue
Harbor n
Around
Guard
watchsta
a call re
women I
board. I
who was
them, re
of the tw
call the S
Coast

West said
on a rowl
women t
main ve
MCSO, th
under th
the row
water. T
ly made
which is
lost sight

The C
patched
helicopte
Miami
Special P

See REFUND, Page 8A

Monroe County Experience

- Civil Citations – rarely used
- Injunctive Relief - powerful tool in right circumstances
 - Serious threats to life safety
 - Private right of action in certain ordinances (vacation rentals)
- Quasi-Criminal
 - Certain types of ordinances
 - Open Container
 - Vacation Rental – Repeat violations
 - SAO turnover – incumbent lost 2000, 2008, 2012, 2016
 - Special Assistant State Attorneys

Monroe County Experience Code Compliance

- DOAH ALJ as Special Magistrate
 - Abandoned board in 1990's due to difficulties
 - Abandoned using local lawyers in 2007 due to conflicts
- Contract rate - \$151 / hour
- Alternates in event of recusal (1 since 2007)
- Video conferencing (fee) but no travel costs
- BOCC delegated power for fine mitigations to ALJ

Monroe County Experience

Code Fine Collection

- Pre-2014 approach to collection of code fines led to:
 - Festering violations
 - No follow up by code compliance post imposition of lien
 - Property owners who thought they were compliant
 - Fines accumulating to values in excess of property values
- In 2014, BOCC adopted a resolution setting strict time lines and responsibilities process *after lien imposed*
 - Improved compliance
 - Dramatic increases in collections
 - Took off when Steve Williams took over Code

Code Compliance



High Weeds



Single Wide



Vacation Rental Home



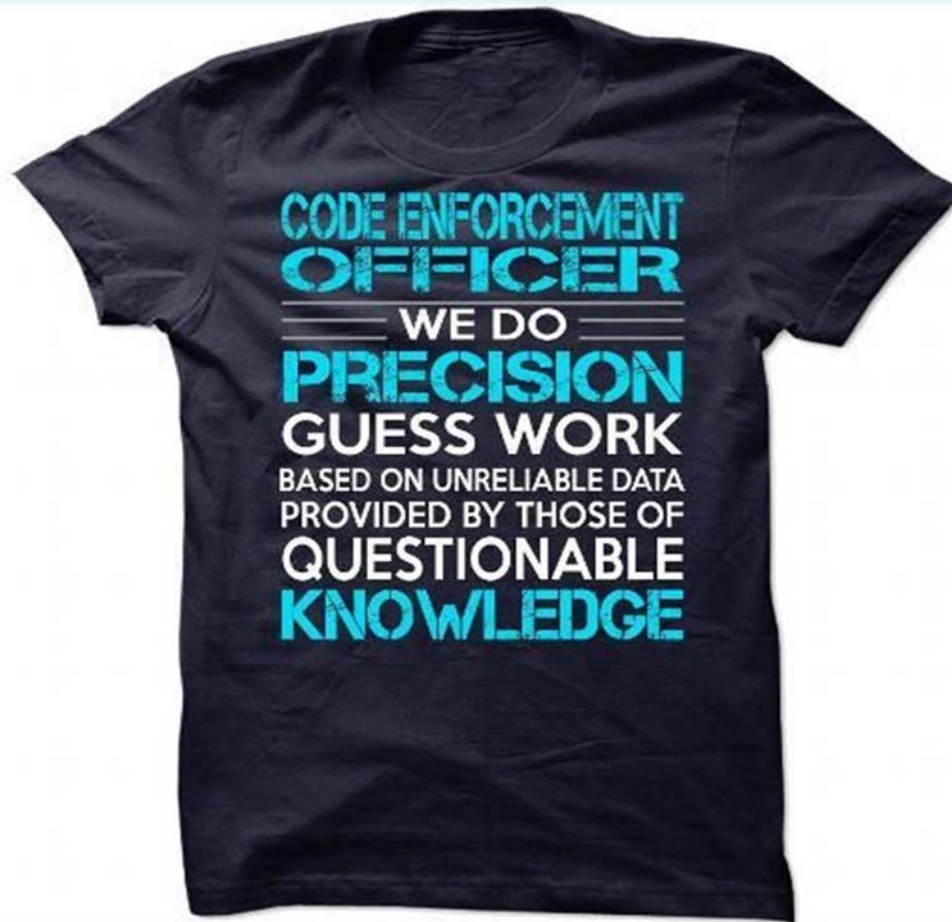
Code Enforcement House



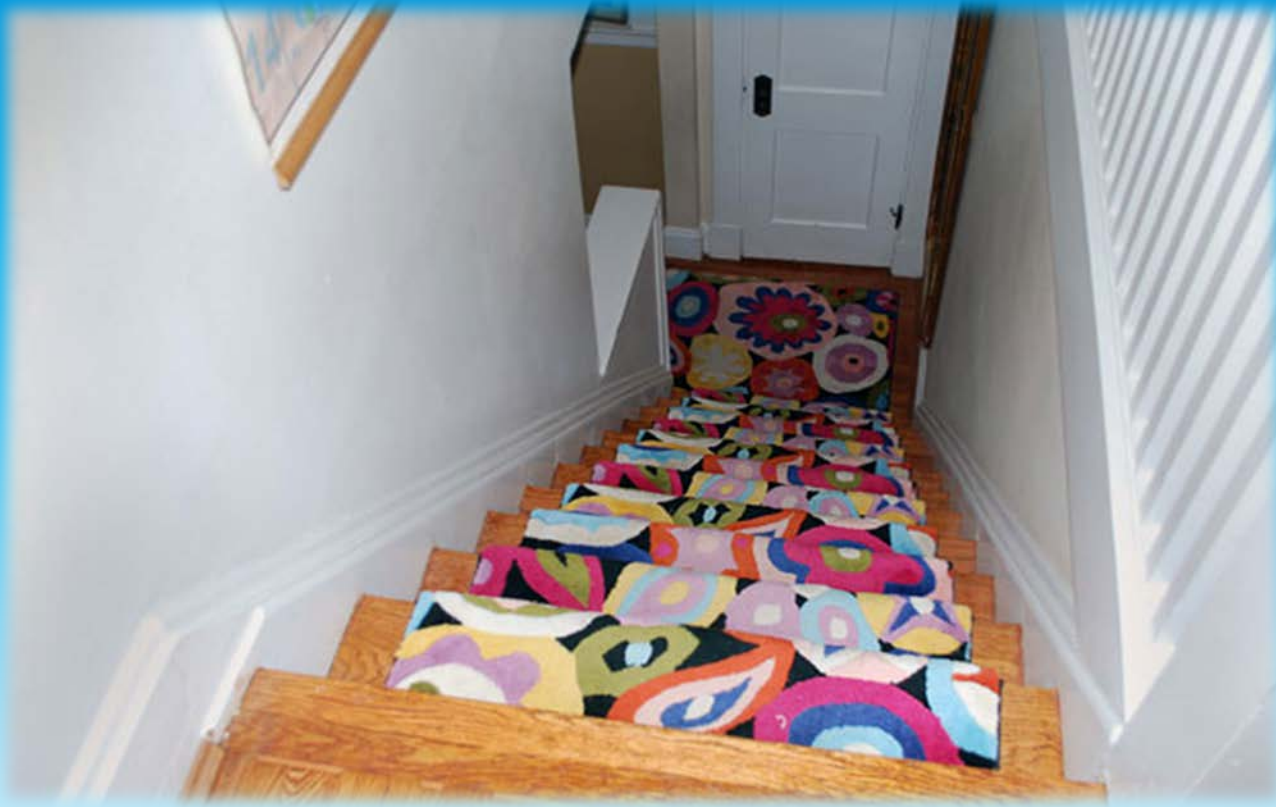
Code Enforcement Officer needs a gun



Code Enforcement T-Shirt



Handrail Building Code Violation



Uneven Steps Building Code Violation



Electric Hazard next to sidewalk



Sewer Connection





MONROE COUNTY, FLORIDA

RESOLUTION NO.0572014

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA, ADOPTING THE PROCEDURES TO BE USED AFTER A FINAL ORDER HAS BEEN RENDERED BY THE CODE COMPLIANCE SPECIAL MAGISTRATE TO INITIATE INJUNCTIVE RELIEF FOR NON-COMPLIANT PROPERTIES, FORECLOSURE AND/OR MONEY JUDGMENT ACTIONS FOR COLLECTION OF UNPAID FINES AND/OR COSTS FROM A PROPERTY OWNER; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 162.09(1), Florida Statutes and Monroe County Code Section 8-31(a) give the Special Magistrate appointed to hear Code Compliance cases the authority to impose fines and costs including the cost of repairs if the County is forced to make repairs, after a finding that the property owner has violated the Monroe County Code(s); and

WHEREAS, pursuant to Section 162.09(3), Florida Statutes and Monroe County Code 8-31(c), a certified copy of an Order imposing a fine or a fine plus repair costs may be recorded in the public records and thereafter constitute a lien against the land on which the violation exists and upon any other real or personal property owned by the violator; and

WHEREAS, a certified copy of the Order imposing the fines and costs becomes a lien on all real and personal property owned by the violator once recorded with the County Clerk; and

WHEREAS, the County has the authority to initiate litigation to enforce its codes and recorded liens; and

WHEREAS, the initiation of litigation may be the only incentive for some property owners to gain compliance; and

WHEREAS, the Board of County Commissioners finds it in the public's interest to have a formalized written procedure to be used after a Final Order has been rendered by the Code Compliance Special Magistrate to initiate injunctive relief on non-compliant properties, foreclosure and/or money judgment actions for collection of unpaid fines and/or costs from a property owner;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY:

Section 1: The County's formal procedure is hereby adopted as set forth in Attachment A: PROCEDURES TO BE USED AFTER A FINAL ORDER HAS BEEN RENDERED BY THE CODE COMPLIANCE SPECIAL MAGISTRATE TO INITIATE INJUNCTIVE RELIEF FOR NON-COMPLIANT PROPERTIES, FORECLOSURE AND/OR MONEY JUDGMENT ACTIONS FOR COLLECTION OF UNPAID FINES AND/OR COSTS FROM A PROPERTY OWNER.

Section 2: This resolution and the incorporated policies shall become effective upon adoption by the County Commission.

PASSED AND ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS of Monroe County, Florida, at a regular meeting of said board held on the 19th of March, 2014.

Mayor Sylvia Murphy
Mayor *pro tem* Danny L. Kolhage
Commissioner Heather Carruthers
Commissioner George Neugent
Commissioner David Rice

Yes
Yes
Yes
Yes
Yes

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

BY: Sylvia J. Murphy
Mayor Sylvia Murphy



(SEAL)
ATTEST: AMY HEAVIN, CLERK
Amy Heavin
Deputy Clerk

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:
Lisa Granger
LISA GRANGER
ASSISTANT COUNTY ATTORNEY
Date 3/2/14

FILED FOR RECORD
2014 APR -3 PM 1:45

ATTACHMENT A

PROCEDURES TO BE USED AFTER A FINAL ORDER HAS BEEN RENDERED BY THE CODE COMPLIANCE SPECIAL MAGISTRATE TO INITIATE INJUNCTIVE RELIEF FOR NON-COMPLIANT PROPERTIES, FORECLOSURE AND/OR MONEY JUDGMENT ACTIONS FOR COLLECTION OF UNPAID FINES AND/OR COSTS FROM A PROPERTY OWNER

1. Special Magistrate (SM) enters a Final Order imposing a compliance date, fines and/or costs after a finding of violation of Monroe County Code(s) by property owner (violation) or approving a Stipulated Agreement with an agreed upon compliance date and fine amounts. The Final Order of SM providing the compliance date, and imposing fines and/or costs is provided to the property owner as soon as practicable. Referrals, if not made previously, are made to other agencies in appropriate circumstances.
2. The Final Order of the SM is recorded by Code Compliance (CC) as a lien by Code Compliance within 14 days after the compliance date for those cases that have not achieved compliance.
3. The Final Order of the SM is recorded as a lien by CC within 45 days after the compliance date for those cases that have achieved compliance by the compliance date but have outstanding costs in excess of \$200.
4. If compliance is not achieved within 75 days of the recording of the lien, then a re-inspection of the property is completed by the Code Inspector assigned to the case. If the property is still not in compliance then a demand letter including the current amount of fines and/or costs is sent to the property owner.
5. If compliance is not achieved within 90 days of the recording of the lien and/or the lien is not satisfied, then CC will research the subject property to determine:
 - i. if the subject property is homesteaded;
 - ii. if the subject property is the only property owned by property owner/violator;
 - iii. what efforts, if any, the property owner has made to achieve compliance;
 - iv. the amount of the lien accrued to date; and
 - v. any other relevant factors, including but not limited to researching the status of the property owner, i.e. any Lis Pendens filed against the property or property owner, any pending or closed foreclosure actions, any open, pending or discharged Bankruptcy petitions.
6. CC staff shall provide a written memo or email to the County Attorney's Office (CAY) with the results of the research outlined and requested further action.
7. The CAY will review the information provided by CC staff.
8. The CAY will move the SM per F.S. 162.09 for an Order authorizing foreclosure or a money judgment action; and.

- i. The Code Compliance Liaison (Liaison) will schedule the motion for the next available SM hearing for a Motion for approval to proceed with a foreclosure and/or money judgment action;
 - ii. The Liaison will mail a Notice of Hearing and Notice of Motion prepared by the Liaison and signed by the CAY to the property owner by certified mail noticing the owner of the date, time, place and the substance (collection action, foreclosure and/or money judgment and/or writ of attachment) of the motion;
 - iii. The Liaison will email/calendar a re-inspection request to the assigned Inspector to conduct inspection prior to the next available SM hearing;
 - iv. The Motion hearing is heard by SM on the specified date;
 - v. If SM finds foreclosure or money judgment is appropriate, the Liaison will notice the property owner of the SM's ruling and email/calendar a re-inspection request to the assigned Inspector to conduct an inspection within 30 days of the SM ruling;
 - vi. CAY will seek permission from the Board of County Commissioners to file for foreclosure or money judgment in court;
 - vii. The assigned Code Inspector will continue to monitor the property for compliance through re-inspections every 90 days and attempts to notify the owner by a quick email letter, telephone call or demand letter every 90 days to inform them that the property is not in compliance and fines are running. The assigned Code Inspector will provide written updates to the CAY every 90 days.
9. Subsequent to the SM's ruling on the Motion, the CAY will place an item on the Commission's agenda seeking the Board's direction and authorization on further enforcement and collection efforts. Potential options for litigation include seeking injunctive relief, a money judgment for the unpaid fines, foreclosure, or other relief. Potential non-litigation options include referral to another agency, allowing liens to accrue, or other relief.
10. If the recommended legal action is referral to another agency, release of lien, or allowing liens to accrue, CAY will send a written memo or email to the Director of Code Compliance outlining recommendation.
11. Once authority is granted by SM and/ or Board of County Commissioners, CC will order a title search on non-homesteaded properties, and the assigned Code Inspector will conduct a re-inspection after receipt of the title search. Litigation will commence after the title search is completed and a current re-inspection is completed. The assigned Code Inspector will continue to monitor the property for compliance through re-inspections every 90 days and attempts to contact the property owner by a quick email letter, telephone call or demand letter every 90 days that the property is not in compliance and fines are running. The assigned Inspector will provide written updates to the CAY every 90 days.
12. If the Board decides not to authorize injunction or enforcement litigation, a decision from the Board could include direction to:
 - i. Allow lien to remain filed and accrue interest until sale or refinancing; or
 - ii. Release the lien; or
 - iii. Request CC staff to provide a progress report on compliance efforts annually at the March BOCC meeting.

Exception –If a violation poses a serious threat to the public health, safety & welfare then immediate permission to file an action for an inspection warrant, injunction and/or demolition may be sought with BOCC direction.

- 1) Final Order
 - a) Non-compliant: Code files lien within 14 days of compliance date;
 - b) Compliant: Code files lien within 45 days of compliance date if compliant, but have unpaid costs of \$200.00;
- 2) Liened Property – Code Staff
 - a) Non-compliant: Within 75 days of lien recordation, site is re-inspected and demand letter sent, including current fines and costs;
 - b) 90 days Non-Compliant: If still non-compliant, code will verify:
 - i. Homestead status;
 - ii. Only property owned by violator?
 - iii. Efforts to achieve compliance?
 - iv. Amount of fines accrued to date?
 - v. All else (including Lis Pendens, pending bank actions, bankruptcy);
 - c) Memo to County Attorney's Office outlining above research;

3) Collections Hearing

- a) County will motion the Special Magistrate for an order authorizing foreclosure or money judgment based upon information from 2)b) i.)—v.);
 - i. Code Inspector to re-inspect premises within 30 days of collections hearing;
- b) County Attorney, upon finding of appropriateness by the Special Magistrate, then seeks permission from the Board of County Commissioners to file for foreclosure or money judgment in Circuit Court. The County Commissioners direct litigation seeking injunctive relief, money judgment for unpaid fines, or foreclosure. Litigation options include referral to another agency, allowing fines to accrue, or other relief;
- c) Code Inspector continues to monitor property for compliance every 90 days;

4) County Commission Hearing

- a) County Commission provides direction for litigation or non-litigation;
- b) If litigation is directed, a title search is to be performed and a re-inspection must be completed;
- c) If litigation is not filed:
 - i. The lien is allowed to remain until resale or refinancing; or,
 - ii. Release the lien; or,
 - iii. Request periodic staff updates;

5) Exception

- a) If a violation is a public health, safety and welfare concern, then immediate permission to file an action for an inspection warrant, injunction and/or demolition may be sought, with County Commission approval;

Questions?

Williams-Steve@monroecounty-fl.gov

Shillinger-Bob@monroecounty-fl.gov

(305) 292-3470